

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Clean
5 Coal FutureGen for Illinois Act of 2011.

6 Section 5. Purpose. Recognizing that the FutureGen Project
7 is a first-of-a-kind research project to permanently sequester
8 underground captured CO₂ emissions from: (1) a coal-fueled
9 power plant that uses as its primary fuel source high volatile
10 bituminous rank coal with greater than 1.7 pounds of sulfur per
11 million btu content or (2) other approved and permitted
12 captured CO₂ sources in the State of Illinois, and that such a
13 project would have benefits to the economy and environment of
14 Illinois, the purpose of this Act is to provide the non-profit
15 FutureGen Alliance with adequate liability protection and
16 permitting certainty to facilitate the siting of the FutureGen
17 Project in the State of Illinois, to provide to the State of
18 Illinois certain financial benefits from environmental
19 attributes for the Project, and to help secure over \$1 billion
20 in federal funding for the Project.

21 Section 10. Legislative findings. The General Assembly
22 finds and determines that:

1 (1) human-induced greenhouse gas emissions have been
2 identified as contributing to global warming, the effects
3 of which pose a threat to public health and safety and the
4 economy of the State of Illinois;

5 (2) in order to meet the energy needs of the State of
6 Illinois, keep its economy strong and protect the
7 environment while reducing its contribution to
8 human-induced greenhouse gas emissions, the State of
9 Illinois must be a leader in developing new low-carbon
10 technologies;

11 (3) carbon capture and storage is a low-carbon
12 technology that involves capturing the captured CO₂ from
13 fossil fuel energy electric generating units and other
14 industrial facilities and injecting it into secure
15 geologic strata for permanent storage;

16 (4) the FutureGen Project is a public-private
17 partnership between the federal Department of Energy, the
18 FutureGen Alliance, and other partners that proposes to use
19 this new technology as part of a plan to transport and
20 store captured CO₂ from a coal-fueled power plant that uses
21 as its primary fuel source high-volatile bituminous rank
22 coal with greater than 1.7 pounds of sulfur per million btu
23 content and other captured CO₂ sources that are approved by
24 the appropriate State of Illinois agency and permitted in
25 the State of Illinois;

26 (5) the FutureGen Project will help ensure the

1 long-term viability of Illinois Basin coal as a major
2 energy source in the State of Illinois and throughout the
3 nation and represents a significant step in the State of
4 Illinois' efforts to become a self-sufficient, clean
5 energy producer;

6 (6) the FutureGen Project provides an opportunity for
7 the State of Illinois to partner with the Federal
8 Department of Energy, the FutureGen Alliance, and other
9 partners in the development of these innovative clean-coal
10 technologies;

11 (7) the FutureGen Project will make the State of
12 Illinois a center for developing and refining clean coal
13 technology and carbon capture and storage, and will result
14 in the development of new technologies designed to improve
15 the efficiency of the energy industry that will be
16 replicated world wide;

17 (8) the FutureGen Project is an important coal
18 development and conversion project that will create jobs in
19 the State of Illinois during the construction and
20 operations phases, contribute to the overall economy of the
21 State of Illinois and help reinvigorate the Illinois Basin
22 coal industry; and

23 (9) the FutureGen Project and the property necessary
24 for the FutureGen Project serve a substantial public
25 purpose as its advanced clean-coal electricity generation,
26 advanced emissions control and carbon capture and storage

1 technologies will benefit the citizens of the State of
2 Illinois.

3 Section 15. Definitions. For the purposes of this Act:

4 "Agency" means the Illinois Environmental Protection
5 Agency or the United States Environmental Protection Agency
6 depending upon which agency has primacy for the CO₂ injection
7 permit.

8 "Captured CO₂" means CO₂ and other trace chemical
9 constituents approved by the Agency for injection into the
10 Mount Simon Formation.

11 "Carbon capture and storage" means the process of
12 collecting captured CO₂ from coal combustion by-products for
13 the purpose of injecting and storing the captured CO₂ for
14 permanent storage.

15 "Carbon dioxide" or "CO₂" means a colorless, odorless gas
16 in the form of one carbon and 2 oxygen atoms that is the
17 principal greenhouse gas.

18 "Department" means the Department of Commerce and Economic
19 Opportunity.

20 "Director" means the Director of Commerce and Economic
21 Opportunity.

22 "Federal Department" means the federal Department of
23 Energy.

24 "FutureGen Alliance" is a 501(c)(3) non-profit consortium
25 of coal and energy producers created to benefit the public

1 interest and the interest of science through the research,
2 development, and demonstration of near zero-emission coal
3 technology, with the cooperation of the Federal Department.

4 "FutureGen Project" means the public-private partnership
5 between the Federal Department, the FutureGen Alliance, and
6 other partners that will control captured CO₂ and will
7 construct and operate a pipeline and storage field for captured
8 CO₂.

9 "Mount Simon Formation" means the deep sandstone reservoir
10 into which the sequestered CO₂ is to be injected at a depth
11 greater than 3,500 feet below ground surface and that is
12 bounded by the granitic basement below and the Eau Claire Shale
13 above.

14 "Operator" means the FutureGen Alliance and its member
15 companies, including their parent companies, subsidiaries,
16 affiliates, directors, officers, employees, and agents, or a
17 not-for-profit successor-in-interest approved by the
18 Department.

19 "Operations phase" means the period of time during which
20 the Operator injects and simultaneously monitors CO₂ into the
21 Mount Simon Formation in accordance with its permit approved by
22 the Agency for the FutureGen Project.

23 "Post-injection" means after the captured CO₂ has been
24 successfully injected into the wellhead at the point at which
25 the captured CO₂ is transferred into the wellbore for carbon
26 sequestration and storage into the Mount Simon Formation.

1 "Pre-injection" means all activities and occurrences prior
2 to successful delivery into the wellhead at the point at which
3 the captured CO₂ is transferred into the wellbore for carbon
4 sequestration and storage into the Mount Simon Formation,
5 including but not limited to, the operation of the FutureGen
6 Project.

7 "Public liability" means any civil legal liability arising
8 out of or resulting from the storage, escape, release, or
9 migration of the sequestered CO₂ that was injected by the
10 Operator. The term "public liability", however, does not
11 include any legal liability arising out of or resulting from
12 the construction, operation, or other pre-injection activity
13 of the Operator or any other third party.

14 "Public liability action" or "action" means a written
15 demand, lawsuit, or claim from any third party received by the
16 Operator seeking a remedy or alleging liability on behalf of
17 Operator resulting from any public liability and is limited to
18 such written demands, claims, or lawsuits asserting claims for
19 property damages, personal or bodily injury damages,
20 environmental damages, or trespass.

21 "Sequestered CO₂" means the captured CO₂ from the FutureGen
22 Project operations that is injected into the Mount Simon
23 Formation by the Operator.

24 Section 20. Title to sequestered CO₂. If the FutureGen
25 Alliance selects as its location for CO₂ storage a designated

1 site or sites in the State of Illinois suitable for injection
2 of captured CO₂ into the Mount Simon Formation, then the
3 Operator shall retain all rights, title, and interest in and to
4 and any liabilities associated with the pre-injection CO₂. The
5 Operator shall retain all rights, title, and interest,
6 including any environmental benefits or credits, in and to and
7 any liabilities associated with the sequestered CO₂ during the
8 operations phase of the FutureGen Project, plus an additional
9 10-year period. Following the operations phase of the FutureGen
10 Project, plus an additional 10-year period, and upon compliance
11 with all applicable permits, the Operator shall transfer and
12 convey and the State of Illinois shall accept and receive, with
13 no payment due from the State of Illinois, all rights, title,
14 and interest, including any future environmental benefits or
15 credits, in and to and any liabilities associated with the
16 sequestered CO₂.

17 Section 25. Insurance against qualified losses.

18 (a) The Operator shall procure an insurance policy from a
19 private insurance carrier or carriers, if and to the extent
20 that such a policy is available at a reasonable cost, that
21 insures the Operator against any qualified loss stemming from a
22 public liability action. The coverage limits for such an
23 insurance policy shall be at least \$25,000,000. Within every
24 10-year period after operations begin for the Project, the
25 Operator and Department shall mutually agree on an independent

1 third party, with appropriate insurance expertise, to conduct a
2 risk-weighted analysis of the project, assess the appropriate
3 level of insurance to protect the project from the financial
4 consequences of public liability actions, and make a
5 recommendation as to whether a greater amount of insurance
6 coverage than the Operator has at the time is commercially
7 available at a reasonable cost to the Operator. This analysis
8 shall incorporate, and not be inconsistent with, results from
9 similar risk-based analyses that may be required of the
10 Operator by the agency permitting CO₂ injection as part of its
11 financial assurance process. The Operator and the Department
12 shall have an opportunity to review the draft analysis and any
13 recommendations for narrowed or expanded levels of insurance
14 coverage prior to finalization of the analysis. If the
15 independent third party recommends that a greater amount of
16 insurance coverage is commercially available at a reasonable
17 cost to the Operator, then the Operator shall procure the
18 recommended level of insurance, to the extent the insurance is
19 commercially available and is recognized as a recoverable cost
20 under the terms of any CO₂ services agreement or power purchase
21 agreement that may be in place for the project at the time of
22 the analysis. The cost of the independent third party shall be
23 borne by the Operator.

24 (b) The protections provided by the State under this Act
25 and the obligations on the Operator shall only apply after the
26 Operator establishes a CO₂ Storage Trust Fund consistent with

1 the purposes of this Act and pays a \$50,000,000 fee to the
2 State, which is to be deposited into the CO₂ Storage Trust
3 Fund. The fee shall be considered a non-refundable expenditure
4 to the Operator for immediate protections and benefits provided
5 by the State.

6 The purpose of the CO₂ Storage Trust Fund shall be to
7 complement commercially available insurance products and to
8 support the Operator's ability to satisfy financial assurance
9 obligations that may be required by law or the terms of the
10 Operator's permit issued by the Agency.

11 The funds in the CO₂ Storage Trust Fund may used to satisfy
12 any qualified loss stemming from a public liability action to
13 the extent that such loss is not otherwise covered by an
14 insurance policy. The funds may also be used to pay reasonable
15 administrative costs associated with managing and resolving
16 claims associated with the CO₂ Storage Trust Fund, except that
17 during the operations phase, no payments from the CO₂ Storage
18 Trust Fund may be used to pay legal fees associated with
19 defending claims resulting from a public liability action. The
20 funds may also be used for post-operations phase activities,
21 including monitoring, CO₂ storage site maintenance, storage
22 site staffing, insurance, well and site closure, or other
23 activities for which a law or permit requires financial
24 assurance.

25 The CO₂ Storage Trust Fund shall be funded in the following
26 manner, toward a maximum amount of \$250,000,000 per 100 million

1 metric tons of CO₂ storage site design capacity, unless the
2 permit approved by the Agency requires a higher maximum amount:

3 (1) Subsequent future annual payments to the CO₂
4 Storage Trust Fund shall be made during the operations
5 phase of the project at an initial rate of \$950,000 per
6 million metric tons of CO₂ injected, with the rate for
7 subsequent annual payments adjusted up or down in order to
8 meet the financial requirements of the Agency's permit and
9 to fulfill the requirements of the Act.

10 (2) The Operator shall deliver annually to the
11 Department an audited financial report that includes CO₂
12 Storage Trust Fund balances, liabilities, projected
13 balances, projected liabilities, and evidence that the
14 financial health of the CO₂ Storage Trust Fund is
15 sufficient for the purposes of this Act.

16 (3) The Operator shall select, subject to the approval
17 of the Agency, an independent third-party trustee to
18 administer the CO₂ Storage Trust Fund.

19 (4) The trustee shall administer the CO₂ Storage Trust
20 Fund on behalf of the Operator during the operations phase
21 of the Project plus an additional 10-year period, and on
22 behalf of both the Operator and the State of Illinois after
23 title to the CO₂ has been transferred to the State of
24 Illinois, to ensure compliance with the Operator's permits
25 and this Act.

26 (5) Once the permitting agency has issued a certificate

1 of completion, or a comparable instrument indicating the
2 site is safely closed, any surplus balance in the CO₂
3 Storage Trust Fund shall be distributed to the State. If
4 the Federal Government provides liability protections that
5 obviates, in part or in full, the purpose of the CO₂
6 Storage Trust Fund, then any surplus balance shall be
7 distributed in accordance with this paragraph (5).

8 (c) The Operator shall maintain an absolute minimum level
9 of financial assurances in the amount of \$100,000,000 against
10 potential losses stemming from a public liability action, in
11 the combination of insurance, CO₂ Storage Trust Fund balance,
12 project assets, or cash or cash equivalents during the
13 operations phase of the FutureGen Project, plus an additional
14 10-year period.

15 (d) Pursuant to Section 30 of this Act, the State shall
16 indemnify and hold harmless the Operator against any qualified
17 loss stemming from a public liability action to the extent that
18 the qualified loss is greater than \$100,000,000 and is not
19 covered by the combination of an insurance policy under
20 subsection (a) of this Section, funds in the CO₂ Storage Trust
21 Fund, project assets, and cash or cash equivalents.

22 (e) If the FutureGen Alliance identifies a designated site
23 or sites in Illinois suitable for injection of captured CO₂
24 into the Mount Simon Formation, then the Department shall be
25 authorized to contract with the FutureGen Alliance, under terms
26 not inconsistent with this Act, in order to define the rights

1 and obligations of the FutureGen Alliance and the Department,
2 including, but not limited to, the insurance and
3 indemnification obligations under Sections 25 and 30 of this
4 Act.

5 (f) If federal indemnification covers all or a portion of
6 the obligations assumed by the State under Section 25 of this
7 Act, such State obligations shall be reduced in proportion to
8 the federal indemnification and be considered subordinated to
9 any federal indemnification.

10 (g) For the purpose of this Section, "qualified loss" means
11 a loss by the Operator stemming from a public liability action
12 other than those losses arising out of or relating to:

13 (1) the intentional or willful misconduct of the
14 Operator;

15 (2) the failure of the Operator to comply with any
16 applicable law, rule, regulation, or other requirement
17 established by the Federal Department, Agency, or State of
18 Illinois for the carbon capture and storage of the
19 sequestered CO₂, including any limitations on the chemical
20 composition of any sequestered CO₂; or

21 (3) any pre-injection activities of the Operator.

22 Section 30. Indemnification. Notwithstanding any law to
23 the contrary, subject to and consistent with the conditions
24 provided in Section 25 of this Act, the State of Illinois shall
25 indemnify, hold harmless, defend, and release the Operator from

1 and against any public liability action asserted against the
2 Operator, subject to the following terms and conditions:

3 (a) The obligation of the State of Illinois to indemnify
4 the Operator does not extend to any public liability arising
5 out of or relating to:

6 (1) the intentional or willful misconduct of the
7 Operator;

8 (2) the failure of the Operator to materially comply
9 with any applicable law, rule, regulation, or other
10 requirement established by the Federal Department, Agency,
11 or State of Illinois for the carbon capture and storage of
12 the sequestered CO₂, including any limitations on the
13 chemical composition of any sequestered CO₂;

14 (3) any pre-injection activities of the Operator; or

15 (4) a qualified loss to the extent that it is equal to
16 or less than \$100,000,000 or is covered by the combination
17 of funds in an insurance policy under subsection (a) of
18 Section 25 of this Act, funds in the CO₂ Storage Trust Fund
19 under subsection (b) of Section 25 of this Act, project
20 assets, and cash or cash equivalents.

21 (b) The indemnification obligations of the State of
22 Illinois assumed under Section 30 of this Act shall be reduced
23 in proportion and be subordinated to any federal
24 indemnification that covers all or a portion of the State's
25 obligations.

1 Section 35. Representation. In furtherance of the State of
2 Illinois' obligations set forth in subsection (b) of Section 25
3 and in Section 30 of this Act, the Attorney General has the
4 following duties:

5 (a) In the event that any public liability action covered
6 under Section 30 of this Act is commenced against the Operator,
7 the Attorney General shall, upon timely and appropriate notice
8 to the Attorney General by the Operator, appear on behalf of
9 the Operator and defend the action. Any such notice must be in
10 writing, must be mailed within 15 days after the date of
11 receipt by the Operator of service of process, and must
12 authorize the Attorney General to represent and defend the
13 Operator in the action. The delivery of this notice to the
14 Attorney General constitutes an agreement by the Operator to
15 cooperate with the Attorney General in defense of the action
16 and a consent that the Attorney General shall conduct the
17 defense as the Attorney General deems advisable and in the best
18 interests of the Operator and the State of Illinois, including
19 settlement in the Attorney General's discretion. The Operator
20 may appear in such action through private counsel to respond or
21 object only to any aspect of a proposed settlement or proposed
22 court order which would directly affect the day-to-day
23 operations of the FutureGen Project. In any such action, the
24 State of Illinois shall pay the court costs and litigation
25 expenses of defending such action, to the extent approved by
26 the Attorney General as reasonable, as they are incurred.

1 (b) In the event that the Attorney General determines
2 either (i) that so appearing and defending the Operator
3 involves an actual or potential conflict of interest or (ii)
4 that the act or omission which gave rise to the claim was not
5 within the scope of the indemnity as provided in Section 30 of
6 this Act, the Attorney General shall decline in writing to
7 appear or defend or shall promptly take appropriate action to
8 withdraw as attorney for the Operator. Upon receipt of such
9 declination or withdrawal by the Attorney General on the basis
10 of an actual or potential conflict of interest, the Operator
11 may employ its own attorney to appear and defend, in which
12 event the State of Illinois shall pay the Operator's court
13 costs, litigation expenses, and attorneys' fees, to the extent
14 approved by the Attorney General as reasonable, as they are
15 incurred.

16 (c) In any action asserted by the Operator or the State of
17 Illinois to enforce the indemnification obligations of the
18 State of Illinois as provided in Section 30 of the Act, the
19 non-prevailing party is responsible for any reasonable court
20 costs, litigation expenses, and attorneys fees incurred by the
21 prevailing party.

22 (d) Court costs and litigation expenses and other costs of
23 providing a defense, including attorneys' fees, paid or
24 obligated under this Section, and the costs of indemnification,
25 including the payment of any final judgment or final settlement
26 under this Section, must be paid by warrant from appropriations

1 to the Department pursuant to vouchers certified by the
2 Attorney General.

3 (e) Nothing contained or implied in this Section shall
4 operate, or be construed or applied, to deprive the State of
5 Illinois, or the Operator, of any defense otherwise available.

6 (f) Any judgment subject to State of Illinois
7 indemnification under this Section is not enforceable against
8 the Operator, but shall be paid by the State of Illinois in the
9 following manner: Upon receipt of a certified copy of the
10 judgment, the Attorney General shall review it to determine if
11 the judgment is (i) final, unreversed, and no longer subject to
12 appeal and (ii) subject to indemnification under Section 30 of
13 this Act. If the Attorney General determines that it is, then
14 the Attorney General shall submit a voucher for the amount of
15 the judgment and any interest thereon to the State of Illinois
16 Comptroller and the amount must be paid by warrant from
17 appropriation to the Department to the judgment creditor solely
18 out of available appropriations.

19 Section 40. Permitting. The State of Illinois shall issue
20 to the Operator all necessary and appropriate permits
21 consistent with State and federal law and corresponding
22 regulations. The State of Illinois must allow the Operator to
23 combine applications when appropriate, and the State of
24 Illinois must otherwise streamline the application process for
25 timely permit issuance.

1 Section 43. Tax exemption. The State of Illinois has
2 offered certain incentives to the FutureGen Alliance to make
3 the State of Illinois the most attractive location for the
4 FutureGen Project.

5 Section 45. Incentives. The State of Illinois has offered
6 certain incentives to the FutureGen Alliance to make the State
7 of Illinois the most attractive location for the FutureGen
8 Project.

9 Section 90. Conditional repeal. This Act shall be repealed
10 within 5 years after the effective date of this amendatory Act
11 of the 97th General Assembly, unless construction of a pipeline
12 and storage field for captured CO₂ for the FutureGen Project
13 has commenced.

14 Section 800. The State Officials and Employees Ethics Act
15 is amended by changing Section 20-5 as follows:

16 (5 ILCS 430/20-5)

17 (Text of Section before amendment by P.A. 96-1528)

18 Sec. 20-5. Executive Ethics Commission.

19 (a) The Executive Ethics Commission is created.

20 (b) The Executive Ethics Commission shall consist of 9
21 commissioners. The Governor shall appoint 5 commissioners, and

1 the Attorney General, Secretary of State, Comptroller, and
2 Treasurer shall each appoint one commissioner. Appointments
3 shall be made by and with the advice and consent of the Senate
4 by three-fifths of the elected members concurring by record
5 vote. Any nomination not acted upon by the Senate within 60
6 session days of the receipt thereof shall be deemed to have
7 received the advice and consent of the Senate. If, during a
8 recess of the Senate, there is a vacancy in an office of
9 commissioner, the appointing authority shall make a temporary
10 appointment until the next meeting of the Senate when the
11 appointing authority shall make a nomination to fill that
12 office. No person rejected for an office of commissioner shall,
13 except by the Senate's request, be nominated again for that
14 office at the same session of the Senate or be appointed to
15 that office during a recess of that Senate. No more than 5
16 commissioners may be of the same political party.

17 The terms of the initial commissioners shall commence upon
18 qualification. Four initial appointees of the Governor, as
19 designated by the Governor, shall serve terms running through
20 June 30, 2007. One initial appointee of the Governor, as
21 designated by the Governor, and the initial appointees of the
22 Attorney General, Secretary of State, Comptroller, and
23 Treasurer shall serve terms running through June 30, 2008. The
24 initial appointments shall be made within 60 days after the
25 effective date of this Act.

26 After the initial terms, commissioners shall serve for

1 4-year terms commencing on July 1 of the year of appointment
2 and running through June 30 of the fourth following year.
3 Commissioners may be reappointed to one or more subsequent
4 terms.

5 Vacancies occurring other than at the end of a term shall
6 be filled by the appointing authority only for the balance of
7 the term of the commissioner whose office is vacant.

8 Terms shall run regardless of whether the position is
9 filled.

10 (c) The appointing authorities shall appoint commissioners
11 who have experience holding governmental office or employment
12 and shall appoint commissioners from the general public. A
13 person is not eligible to serve as a commissioner if that
14 person (i) has been convicted of a felony or a crime of
15 dishonesty or moral turpitude, (ii) is, or was within the
16 preceding 12 months, engaged in activities that require
17 registration under the Lobbyist Registration Act, (iii) is
18 related to the appointing authority, or (iv) is a State officer
19 or employee.

20 (d) The Executive Ethics Commission shall have
21 jurisdiction over all officers and employees of State agencies
22 other than the General Assembly, the Senate, the House of
23 Representatives, the President and Minority Leader of the
24 Senate, the Speaker and Minority Leader of the House of
25 Representatives, the Senate Operations Commission, the
26 legislative support services agencies, and the Office of the

1 Auditor General. The jurisdiction of the Commission is limited
2 to matters arising under this Act.

3 A member or legislative branch State employee serving on an
4 executive branch board or commission remains subject to the
5 jurisdiction of the Legislative Ethics Commission and is not
6 subject to the jurisdiction of the Executive Ethics Commission.

7 (d-5) The Executive Ethics Commission shall have
8 jurisdiction over all chief procurement officers and
9 procurement compliance monitors and their respective staffs.
10 The Executive Ethics Commission shall have jurisdiction over
11 any matters arising under the Illinois Procurement Code if the
12 Commission is given explicit authority in that Code.

13 (d-6) The Executive Ethics Commission shall have
14 jurisdiction over the Illinois Power Agency and its staff. The
15 Director of the Agency shall be appointed by a majority of the
16 commissioners of the Executive Ethics Commission, subject to
17 Senate confirmation, for a term of 2 years; provided that,
18 notwithstanding any other provision of State law, the term of
19 the Director holding the position on the effective date of this
20 amendatory Act of the 97th General Assembly shall expire on
21 December 31, 2013. The Director is removable for cause by a
22 majority of the Commission upon a finding of neglect,
23 malfeasance, absence, or incompetence.

24 (e) The Executive Ethics Commission must meet, either in
25 person or by other technological means, at least monthly and as
26 often as necessary. At the first meeting of the Executive

1 Ethics Commission, the commissioners shall choose from their
2 number a chairperson and other officers that they deem
3 appropriate. The terms of officers shall be for 2 years
4 commencing July 1 and running through June 30 of the second
5 following year. Meetings shall be held at the call of the
6 chairperson or any 3 commissioners. Official action by the
7 Commission shall require the affirmative vote of 5
8 commissioners, and a quorum shall consist of 5 commissioners.
9 Commissioners shall receive compensation in an amount equal to
10 the compensation of members of the State Board of Elections and
11 may be reimbursed for their reasonable expenses actually
12 incurred in the performance of their duties.

13 (f) No commissioner or employee of the Executive Ethics
14 Commission may during his or her term of appointment or
15 employment:

16 (1) become a candidate for any elective office;

17 (2) hold any other elected or appointed public office
18 except for appointments on governmental advisory boards or
19 study commissions or as otherwise expressly authorized by
20 law;

21 (3) be actively involved in the affairs of any
22 political party or political organization; or

23 (4) advocate for the appointment of another person to
24 an appointed or elected office or position or actively
25 participate in any campaign for any elective office.

26 (g) An appointing authority may remove a commissioner only

1 for cause.

2 (h) The Executive Ethics Commission shall appoint an
3 Executive Director. The compensation of the Executive Director
4 shall be as determined by the Commission. The Executive
5 Director of the Executive Ethics Commission may employ and
6 determine the compensation of staff, as appropriations permit.

7 (i) The Executive Ethics Commission shall appoint, by a
8 majority of the members appointed to the Commission, chief
9 procurement officers and procurement compliance monitors in
10 accordance with the provisions of the Illinois Procurement
11 Code. The compensation of a chief procurement officer and
12 procurement compliance monitor shall be determined by the
13 Commission.

14 (Source: P.A. 96-555, eff. 8-18-09.)

15 (Text of Section after amendment by P.A. 96-1528)
16 Sec. 20-5. Executive Ethics Commission.

17 (a) The Executive Ethics Commission is created.

18 (b) The Executive Ethics Commission shall consist of 9
19 commissioners. The Governor shall appoint 5 commissioners, and
20 the Attorney General, Secretary of State, Comptroller, and
21 Treasurer shall each appoint one commissioner. Appointments
22 shall be made by and with the advice and consent of the Senate
23 by three-fifths of the elected members concurring by record
24 vote. Any nomination not acted upon by the Senate within 60
25 session days of the receipt thereof shall be deemed to have

1 received the advice and consent of the Senate. If, during a
2 recess of the Senate, there is a vacancy in an office of
3 commissioner, the appointing authority shall make a temporary
4 appointment until the next meeting of the Senate when the
5 appointing authority shall make a nomination to fill that
6 office. No person rejected for an office of commissioner shall,
7 except by the Senate's request, be nominated again for that
8 office at the same session of the Senate or be appointed to
9 that office during a recess of that Senate. No more than 5
10 commissioners may be of the same political party.

11 The terms of the initial commissioners shall commence upon
12 qualification. Four initial appointees of the Governor, as
13 designated by the Governor, shall serve terms running through
14 June 30, 2007. One initial appointee of the Governor, as
15 designated by the Governor, and the initial appointees of the
16 Attorney General, Secretary of State, Comptroller, and
17 Treasurer shall serve terms running through June 30, 2008. The
18 initial appointments shall be made within 60 days after the
19 effective date of this Act.

20 After the initial terms, commissioners shall serve for
21 4-year terms commencing on July 1 of the year of appointment
22 and running through June 30 of the fourth following year.
23 Commissioners may be reappointed to one or more subsequent
24 terms.

25 Vacancies occurring other than at the end of a term shall
26 be filled by the appointing authority only for the balance of

1 the term of the commissioner whose office is vacant.

2 Terms shall run regardless of whether the position is
3 filled.

4 (c) The appointing authorities shall appoint commissioners
5 who have experience holding governmental office or employment
6 and shall appoint commissioners from the general public. A
7 person is not eligible to serve as a commissioner if that
8 person (i) has been convicted of a felony or a crime of
9 dishonesty or moral turpitude, (ii) is, or was within the
10 preceding 12 months, engaged in activities that require
11 registration under the Lobbyist Registration Act, (iii) is
12 related to the appointing authority, or (iv) is a State officer
13 or employee.

14 (d) The Executive Ethics Commission shall have
15 jurisdiction over all officers and employees of State agencies
16 other than the General Assembly, the Senate, the House of
17 Representatives, the President and Minority Leader of the
18 Senate, the Speaker and Minority Leader of the House of
19 Representatives, the Senate Operations Commission, the
20 legislative support services agencies, and the Office of the
21 Auditor General. The Executive Ethics Commission shall have
22 jurisdiction over all board members and employees of Regional
23 Transit Boards. The jurisdiction of the Commission is limited
24 to matters arising under this Act, except as provided in
25 subsection (d-5).

26 A member or legislative branch State employee serving on an

1 executive branch board or commission remains subject to the
2 jurisdiction of the Legislative Ethics Commission and is not
3 subject to the jurisdiction of the Executive Ethics Commission.

4 (d-5) The Executive Ethics Commission shall have
5 jurisdiction over all chief procurement officers and
6 procurement compliance monitors and their respective staffs.
7 The Executive Ethics Commission shall have jurisdiction over
8 any matters arising under the Illinois Procurement Code if the
9 Commission is given explicit authority in that Code.

10 (d-6) The Executive Ethics Commission shall have
11 jurisdiction over the Illinois Power Agency and its staff. The
12 Director of the Agency shall be appointed by a majority of the
13 commissioners of the Executive Ethics Commission, subject to
14 Senate confirmation, for a term of 2 years; provided that,
15 notwithstanding any other provision of State law, the term of
16 the Director holding the position on the effective date of this
17 amendatory Act of the 97th General Assembly shall expire on
18 December 31, 2013. The Director is removable for cause by a
19 majority of the Commission upon a finding of neglect,
20 malfeasance, absence, or incompetence.

21 (e) The Executive Ethics Commission must meet, either in
22 person or by other technological means, at least monthly and as
23 often as necessary. At the first meeting of the Executive
24 Ethics Commission, the commissioners shall choose from their
25 number a chairperson and other officers that they deem
26 appropriate. The terms of officers shall be for 2 years

1 commencing July 1 and running through June 30 of the second
2 following year. Meetings shall be held at the call of the
3 chairperson or any 3 commissioners. Official action by the
4 Commission shall require the affirmative vote of 5
5 commissioners, and a quorum shall consist of 5 commissioners.
6 Commissioners shall receive compensation in an amount equal to
7 the compensation of members of the State Board of Elections and
8 may be reimbursed for their reasonable expenses actually
9 incurred in the performance of their duties.

10 (f) No commissioner or employee of the Executive Ethics
11 Commission may during his or her term of appointment or
12 employment:

13 (1) become a candidate for any elective office;

14 (2) hold any other elected or appointed public office
15 except for appointments on governmental advisory boards or
16 study commissions or as otherwise expressly authorized by
17 law;

18 (3) be actively involved in the affairs of any
19 political party or political organization; or

20 (4) advocate for the appointment of another person to
21 an appointed or elected office or position or actively
22 participate in any campaign for any elective office.

23 (g) An appointing authority may remove a commissioner only
24 for cause.

25 (h) The Executive Ethics Commission shall appoint an
26 Executive Director. The compensation of the Executive Director

1 shall be as determined by the Commission. The Executive
2 Director of the Executive Ethics Commission may employ and
3 determine the compensation of staff, as appropriations permit.

4 (i) The Executive Ethics Commission shall appoint, by a
5 majority of the members appointed to the Commission, chief
6 procurement officers and procurement compliance monitors in
7 accordance with the provisions of the Illinois Procurement
8 Code. The compensation of a chief procurement officer and
9 procurement compliance monitor shall be determined by the
10 Commission.

11 (Source: P.A. 96-555, eff. 8-18-09; 96-1528, eff. 7-1-11.)

12 Section 820. The Executive Reorganization Implementation
13 Act is amended by changing Section 3.1 as follows:

14 (15 ILCS 15/3.1) (from Ch. 127, par. 1803.1)

15 Sec. 3.1. "Agency directly responsible to the Governor" or
16 "agency" means any office, officer, division, or part thereof,
17 and any other office, nonelective officer, department,
18 division, bureau, board, or commission in the executive branch
19 of State government, except that it does not apply to any
20 agency whose primary function is service to the General
21 Assembly or the Judicial Branch of State government, or to any
22 agency administered by the Attorney General, Secretary of
23 State, State Comptroller or State Treasurer. In addition the
24 term does not apply to the following agencies created by law

1 with the primary responsibility of exercising regulatory or
2 adjudicatory functions independently of the Governor:

3 (1) the State Board of Elections;

4 (2) the State Board of Education;

5 (3) the Illinois Commerce Commission;

6 (4) the Illinois Workers' Compensation Commission;

7 (5) the Civil Service Commission;

8 (6) the Fair Employment Practices Commission;

9 (7) the Pollution Control Board;

10 (8) the Department of State Police Merit Board;

11 (9) the Illinois Racing Board; ~~—~~

12 (10) the Illinois Power Agency.

13 (Source: P.A. 96-796, eff. 10-29-09.)

14 Section 830. The Civil Administrative Code of Illinois is
15 amended by changing Sections 5-15 and 5-20 as follows:

16 (20 ILCS 5/5-15) (was 20 ILCS 5/3)

17 Sec. 5-15. Departments of State government. The
18 Departments of State government are created as follows:

19 The Department on Aging.

20 The Department of Agriculture.

21 The Department of Central Management Services.

22 The Department of Children and Family Services.

23 The Department of Commerce and Economic Opportunity.

24 The Department of Corrections.

1 The Department of Employment Security.
2 The Illinois Emergency Management Agency.
3 The Department of Financial and Professional Regulation.
4 The Department of Healthcare and Family Services.
5 The Department of Human Rights.
6 The Department of Human Services.
7 ~~The Illinois Power Agency.~~
8 The Department of Juvenile Justice.
9 The Department of Labor.
10 The Department of the Lottery.
11 The Department of Natural Resources.
12 The Department of Public Health.
13 The Department of Revenue.
14 The Department of State Police.
15 The Department of Transportation.
16 The Department of Veterans' Affairs.

17 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;
18 95-777, eff. 8-4-08; 96-328, eff. 8-11-09.)

19 (20 ILCS 5/5-20) (was 20 ILCS 5/4)

20 Sec. 5-20. Heads of departments. Each department shall have
21 an officer as its head who shall be known as director or
22 secretary and who shall, subject to the provisions of the Civil
23 Administrative Code of Illinois, execute the powers and
24 discharge the duties vested by law in his or her respective
25 department.

1 The following officers are hereby created:

2 Director of Aging, for the Department on Aging.

3 Director of Agriculture, for the Department of
4 Agriculture.

5 Director of Central Management Services, for the
6 Department of Central Management Services.

7 Director of Children and Family Services, for the
8 Department of Children and Family Services.

9 Director of Commerce and Economic Opportunity, for the
10 Department of Commerce and Economic Opportunity.

11 Director of Corrections, for the Department of
12 Corrections.

13 Director of the Illinois Emergency Management Agency, for
14 the Illinois Emergency Management Agency.

15 Director of Employment Security, for the Department of
16 Employment Security.

17 Secretary of Financial and Professional Regulation, for
18 the Department of Financial and Professional Regulation.

19 Director of Healthcare and Family Services, for the
20 Department of Healthcare and Family Services.

21 Director of Human Rights, for the Department of Human
22 Rights.

23 Secretary of Human Services, for the Department of Human
24 Services.

25 ~~Director of the Illinois Power Agency, for the Illinois~~
26 ~~Power Agency.~~

1 Director of Juvenile Justice, for the Department of
2 Juvenile Justice.

3 Director of Labor, for the Department of Labor.

4 Director of the Lottery, for the Department of the Lottery.

5 Director of Natural Resources, for the Department of
6 Natural Resources.

7 Director of Public Health, for the Department of Public
8 Health.

9 Director of Revenue, for the Department of Revenue.

10 Director of State Police, for the Department of State
11 Police.

12 Secretary of Transportation, for the Department of
13 Transportation.

14 Director of Veterans' Affairs, for the Department of
15 Veterans' Affairs.

16 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;
17 95-777, eff. 8-4-08; 96-328, eff. 8-11-09.)

18 Section 840. The Personnel Code is amended by changing
19 Section 4c as follows:

20 (20 ILCS 415/4c) (from Ch. 127, par. 63b104c)

21 Sec. 4c. General exemptions. The following positions in
22 State service shall be exempt from jurisdictions A, B, and C,
23 unless the jurisdictions shall be extended as provided in this
24 Act:

1 (1) All officers elected by the people.

2 (2) All positions under the Lieutenant Governor,
3 Secretary of State, State Treasurer, State Comptroller,
4 State Board of Education, Clerk of the Supreme Court,
5 Attorney General, and State Board of Elections.

6 (3) Judges, and officers and employees of the courts,
7 and notaries public.

8 (4) All officers and employees of the Illinois General
9 Assembly, all employees of legislative commissions, all
10 officers and employees of the Illinois Legislative
11 Reference Bureau, the Legislative Research Unit, and the
12 Legislative Printing Unit.

13 (5) All positions in the Illinois National Guard and
14 Illinois State Guard, paid from federal funds or positions
15 in the State Military Service filled by enlistment and paid
16 from State funds.

17 (6) All employees of the Governor at the executive
18 mansion and on his immediate personal staff.

19 (7) Directors of Departments, the Adjutant General,
20 the Assistant Adjutant General, the Director of the
21 Illinois Emergency Management Agency, members of boards
22 and commissions, and all other positions appointed by the
23 Governor by and with the consent of the Senate.

24 (8) The presidents, other principal administrative
25 officers, and teaching, research and extension faculties
26 of Chicago State University, Eastern Illinois University,

1 Governors State University, Illinois State University,
2 Northeastern Illinois University, Northern Illinois
3 University, Western Illinois University, the Illinois
4 Community College Board, Southern Illinois University,
5 Illinois Board of Higher Education, University of
6 Illinois, State Universities Civil Service System,
7 University Retirement System of Illinois, and the
8 administrative officers and scientific and technical staff
9 of the Illinois State Museum.

10 (9) All other employees except the presidents, other
11 principal administrative officers, and teaching, research
12 and extension faculties of the universities under the
13 jurisdiction of the Board of Regents and the colleges and
14 universities under the jurisdiction of the Board of
15 Governors of State Colleges and Universities, Illinois
16 Community College Board, Southern Illinois University,
17 Illinois Board of Higher Education, Board of Governors of
18 State Colleges and Universities, the Board of Regents,
19 University of Illinois, State Universities Civil Service
20 System, University Retirement System of Illinois, so long
21 as these are subject to the provisions of the State
22 Universities Civil Service Act.

23 (10) The State Police so long as they are subject to
24 the merit provisions of the State Police Act.

25 (11) (Blank).

26 (12) The technical and engineering staffs of the

1 Department of Transportation, the Department of Nuclear
2 Safety, the Pollution Control Board, and the Illinois
3 Commerce Commission, and the technical and engineering
4 staff providing architectural and engineering services in
5 the Department of Central Management Services.

6 (13) All employees of the Illinois State Toll Highway
7 Authority.

8 (14) The Secretary of the Illinois Workers'
9 Compensation Commission.

10 (15) All persons who are appointed or employed by the
11 Director of Insurance under authority of Section 202 of the
12 Illinois Insurance Code to assist the Director of Insurance
13 in discharging his responsibilities relating to the
14 rehabilitation, liquidation, conservation, and dissolution
15 of companies that are subject to the jurisdiction of the
16 Illinois Insurance Code.

17 (16) All employees of the St. Louis Metropolitan Area
18 Airport Authority.

19 (17) All investment officers employed by the Illinois
20 State Board of Investment.

21 (18) Employees of the Illinois Young Adult
22 Conservation Corps program, administered by the Illinois
23 Department of Natural Resources, authorized grantee under
24 Title VIII of the Comprehensive Employment and Training Act
25 of 1973, 29 USC 993.

26 (19) Seasonal employees of the Department of

1 Agriculture for the operation of the Illinois State Fair
2 and the DuQuoin State Fair, no one person receiving more
3 than 29 days of such employment in any calendar year.

4 (20) All "temporary" employees hired under the
5 Department of Natural Resources' Illinois Conservation
6 Service, a youth employment program that hires young people
7 to work in State parks for a period of one year or less.

8 (21) All hearing officers of the Human Rights
9 Commission.

10 (22) All employees of the Illinois Mathematics and
11 Science Academy.

12 (23) All employees of the Kankakee River Valley Area
13 Airport Authority.

14 (24) The commissioners and employees of the Executive
15 Ethics Commission.

16 (25) The Executive Inspectors General, including
17 special Executive Inspectors General, and employees of
18 each Office of an Executive Inspector General.

19 (26) The commissioners and employees of the
20 Legislative Ethics Commission.

21 (27) The Legislative Inspector General, including
22 special Legislative Inspectors General, and employees of
23 the Office of the Legislative Inspector General.

24 (28) The Auditor General's Inspector General and
25 employees of the Office of the Auditor General's Inspector
26 General.

1 (29) All employees of the Illinois Power Agency.

2 (Source: P.A. 95-728, eff. 7-1-08 - See Sec. 999.)

3 Section 860. The Illinois Power Agency Act is amended by
4 changing Sections 1-5, 1-15, 1-20, 1-25, 1-70, and 1-75 as
5 follows:

6 (20 ILCS 3855/1-5)

7 Sec. 1-5. Legislative declarations and findings. The
8 General Assembly finds and declares:

9 (1) The health, welfare, and prosperity of all Illinois
10 citizens require the provision of adequate, reliable,
11 affordable, efficient, and environmentally sustainable
12 electric service at the lowest total cost over time, taking
13 into account any benefits of price stability.

14 (2) The transition to retail competition is not
15 complete. Some customers, especially residential and small
16 commercial customers, have failed to benefit from lower
17 electricity costs from retail and wholesale competition.

18 (3) Escalating prices for electricity in Illinois pose
19 a serious threat to the economic well-being, health, and
20 safety of the residents of and the commerce and industry of
21 the State.

22 (4) To protect against this threat to economic
23 well-being, health, and safety it is necessary to improve
24 the process of procuring electricity to serve Illinois

1 residents, to promote investment in energy efficiency and
2 demand-response measures, and to support development of
3 clean coal technologies and renewable resources.

4 (5) Procuring a diverse electricity supply portfolio
5 will ensure the lowest total cost over time for adequate,
6 reliable, efficient, and environmentally sustainable
7 electric service.

8 (6) Including cost-effective renewable resources in
9 that portfolio will reduce long-term direct and indirect
10 costs to consumers by decreasing environmental impacts and
11 by avoiding or delaying the need for new generation,
12 transmission, and distribution infrastructure.

13 (7) Energy efficiency, demand-response measures, and
14 renewable energy are resources currently underused in
15 Illinois.

16 (8) The State should encourage the use of advanced
17 clean coal technologies that capture and sequester carbon
18 dioxide emissions to advance environmental protection
19 goals and to demonstrate the viability of coal and
20 coal-derived fuels in a carbon-constrained economy.

21 (9) The General Assembly enacted Public Act 96-0795 to
22 reform the State's purchasing processes, recognizing that
23 government procurement is susceptible to abuse if
24 structural and procedural safeguards are not in place to
25 ensure independence, insulation, oversight, and
26 transparency.

1 (10) The principles that underlie the procurement
2 reform legislation apply also in the context of power
3 purchasing.

4 The General Assembly therefore finds that it is necessary
5 to create the Illinois Power Agency and that the goals and
6 objectives of that Agency are to accomplish each of the
7 following:

8 (A) Develop electricity procurement plans to ensure
9 adequate, reliable, affordable, efficient, and
10 environmentally sustainable electric service at the lowest
11 total cost over time, taking into account any benefits of
12 price stability, for electric utilities that on December
13 31, 2005 provided electric service to at least 100,000
14 customers in Illinois. The procurement plan shall be
15 updated on an annual basis and shall include renewable
16 energy resources sufficient to achieve the standards
17 specified in this Act.

18 (B) Conduct competitive procurement processes to
19 procure the supply resources identified in the procurement
20 plan.

21 (C) Develop electric generation and co-generation
22 facilities that use indigenous coal or renewable
23 resources, or both, financed with bonds issued by the
24 Illinois Finance Authority.

25 (D) Supply electricity from the Agency's facilities at
26 cost to one or more of the following: municipal electric

1 systems, governmental aggregators, or rural electric
2 cooperatives in Illinois.

3 (E) Ensure that the process of power procurement is
4 conducted in an ethical and transparent fashion, immune
5 from improper influence.

6 (F) Continue to review its policies and practices to
7 determine how best to meet its mission of providing the
8 lowest cost power to the greatest number of people, at any
9 given point in time, in accordance with applicable law.

10 (G) Operate in a structurally insulated, independent,
11 and transparent fashion so that nothing impedes the
12 Agency's mission to secure power at the best prices the
13 market will bear, provided that the Agency meets all
14 applicable legal requirements.

15 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09.)

16 (20 ILCS 3855/1-15)

17 Sec. 1-15. Illinois Power Agency.

18 (a) For the purpose of effectuating the policy declared in
19 Section 1-5 of this Act, a State agency known as the Illinois
20 Power Agency is created. The Agency shall exercise governmental
21 and public powers, be perpetual in duration, and have the
22 powers and duties enumerated in this Act, together with such
23 others conferred upon it by law.

24 (b) The Agency is not created or organized, and its
25 operations shall not be conducted, for the purpose of making a

1 profit. No part of the revenues or assets of the Agency shall
2 inure to the benefit of or be distributable to any of its
3 employees or any other private persons, except as provided in
4 this Act for actual services rendered. The Agency shall operate
5 as an independent agency subject to the oversight of the
6 Executive Ethics Commission.

7 (Source: P.A. 95-481, eff. 8-28-07.)

8 (20 ILCS 3855/1-20)

9 Sec. 1-20. General powers of the Agency.

10 (a) The Agency is authorized to do each of the following:

11 (1) Develop electricity procurement plans to ensure
12 adequate, reliable, affordable, efficient, and
13 environmentally sustainable electric service at the lowest
14 total cost over time, taking into account any benefits of
15 price stability, for electric utilities that on December
16 31, 2005 provided electric service to at least 100,000
17 customers in Illinois. The procurement plans shall be
18 updated on an annual basis and shall include electricity
19 generated from renewable resources sufficient to achieve
20 the standards specified in this Act.

21 (2) Conduct competitive procurement processes to
22 procure the supply resources identified in the procurement
23 plan, pursuant to Section 16-111.5 of the Public Utilities
24 Act.

25 (3) Develop electric generation and co-generation

1 facilities that use indigenous coal or renewable
2 resources, or both, financed with bonds issued by the
3 Illinois Finance Authority.

4 (4) Supply electricity from the Agency's facilities at
5 cost to one or more of the following: municipal electric
6 systems, governmental aggregators, or rural electric
7 cooperatives in Illinois.

8 (b) Except as otherwise limited by this Act, the Agency has
9 all of the powers necessary or convenient to carry out the
10 purposes and provisions of this Act, including without
11 limitation, each of the following:

12 (1) To have a corporate seal, and to alter that seal at
13 pleasure, and to use it by causing it or a facsimile to be
14 affixed or impressed or reproduced in any other manner.

15 (2) To use the services of the Illinois Finance
16 Authority necessary to carry out the Agency's purposes.

17 (3) To negotiate and enter into loan agreements and
18 other agreements with the Illinois Finance Authority.

19 (4) To obtain and employ personnel and hire consultants
20 that are necessary to fulfill the Agency's purposes, and to
21 make expenditures for that purpose within the
22 appropriations for that purpose.

23 (5) To purchase, receive, take by grant, gift, devise,
24 bequest, or otherwise, lease, or otherwise acquire, own,
25 hold, improve, employ, use, and otherwise deal in and with,
26 real or personal property whether tangible or intangible,

1 or any interest therein, within the State.

2 (6) To acquire real or personal property, whether
3 tangible or intangible, including without limitation
4 property rights, interests in property, franchises,
5 obligations, contracts, and debt and equity securities,
6 and to do so by the exercise of the power of eminent domain
7 in accordance with Section 1-21; except that any real
8 property acquired by the exercise of the power of eminent
9 domain must be located within the State.

10 (7) To sell, convey, lease, exchange, transfer,
11 abandon, or otherwise dispose of, or mortgage, pledge, or
12 create a security interest in, any of its assets,
13 properties, or any interest therein, wherever situated.

14 (8) To purchase, take, receive, subscribe for, or
15 otherwise acquire, hold, make a tender offer for, vote,
16 employ, sell, lend, lease, exchange, transfer, or
17 otherwise dispose of, mortgage, pledge, or grant a security
18 interest in, use, and otherwise deal in and with, bonds and
19 other obligations, shares, or other securities (or
20 interests therein) issued by others, whether engaged in a
21 similar or different business or activity.

22 (9) To make and execute agreements, contracts, and
23 other instruments necessary or convenient in the exercise
24 of the powers and functions of the Agency under this Act,
25 including contracts with any person, including personal
26 service contracts, or with any local government, State

1 agency, or other entity; and all State agencies and all
2 local governments are authorized to enter into and do all
3 things necessary to perform any such agreement, contract,
4 or other instrument with the Agency. No such agreement,
5 contract, or other instrument shall exceed 40 years.

6 (10) To lend money, invest and reinvest its funds in
7 accordance with the Public Funds Investment Act, and take
8 and hold real and personal property as security for the
9 payment of funds loaned or invested.

10 (11) To borrow money at such rate or rates of interest
11 as the Agency may determine, issue its notes, bonds, or
12 other obligations to evidence that indebtedness, and
13 secure any of its obligations by mortgage or pledge of its
14 real or personal property, machinery, equipment,
15 structures, fixtures, inventories, revenues, grants, and
16 other funds as provided or any interest therein, wherever
17 situated.

18 (12) To enter into agreements with the Illinois Finance
19 Authority to issue bonds whether or not the income
20 therefrom is exempt from federal taxation.

21 (13) To procure insurance against any loss in
22 connection with its properties or operations in such amount
23 or amounts and from such insurers, including the federal
24 government, as it may deem necessary or desirable, and to
25 pay any premiums therefor.

26 (14) To negotiate and enter into agreements with

1 trustees or receivers appointed by United States
2 bankruptcy courts or federal district courts or in other
3 proceedings involving adjustment of debts and authorize
4 proceedings involving adjustment of debts and authorize
5 legal counsel for the Agency to appear in any such
6 proceedings.

7 (15) To file a petition under Chapter 9 of Title 11 of
8 the United States Bankruptcy Code or take other similar
9 action for the adjustment of its debts.

10 (16) To enter into management agreements for the
11 operation of any of the property or facilities owned by the
12 Agency.

13 (17) To enter into an agreement to transfer and to
14 transfer any land, facilities, fixtures, or equipment of
15 the Agency to one or more municipal electric systems,
16 governmental aggregators, or rural electric agencies or
17 cooperatives, for such consideration and upon such terms as
18 the Agency may determine to be in the best interest of the
19 citizens of Illinois.

20 (18) To enter upon any lands and within any building
21 whenever in its judgment it may be necessary for the
22 purpose of making surveys and examinations to accomplish
23 any purpose authorized by this Act.

24 (19) To maintain an office or offices at such place or
25 places in the State as it may determine.

26 (20) To request information, and to make any inquiry,

1 investigation, survey, or study that the Agency may deem
2 necessary to enable it effectively to carry out the
3 provisions of this Act.

4 (21) To accept and expend appropriations.

5 (22) To engage in any activity or operation that is
6 incidental to and in furtherance of efficient operation to
7 accomplish the Agency's purposes, including hiring
8 employees that the Director deems essential for the
9 operations of the Agency.

10 (23) To adopt, revise, amend, and repeal rules with
11 respect to its operations, properties, and facilities as
12 may be necessary or convenient to carry out the purposes of
13 this Act, subject to the provisions of the Illinois
14 Administrative Procedure Act and Sections 1-22 and 1-35 of
15 this Act.

16 (24) To establish and collect charges and fees as
17 described in this Act.

18 (25) To manage procurement of substitute natural gas
19 from a facility that meets the criteria specified in
20 subsection (a) of Section 1-58 of this Act, on terms and
21 conditions that may be approved by the Agency pursuant to
22 subsection (d) of Section 1-58 of this Act, to support the
23 operations of State agencies and local governments that
24 agree to such terms and conditions. This procurement
25 process is not subject to the Procurement Code.

26 (Source: P.A. 95-481, eff. 8-28-07; 96-784, eff. 8-28-09;

1 96-1000, eff. 7-2-10.)

2 (20 ILCS 3855/1-25)

3 Sec. 1-25. Agency subject to other laws. Unless otherwise
4 stated, the Agency is subject to the provisions of all
5 applicable laws, including but not limited to, each of the
6 following:

7 (1) The State Records Act.

8 (2) The Illinois Procurement Code, except that the
9 Illinois Procurement Code does not apply to the hiring of
10 procurement administrators or procurement planning
11 consultants pursuant to Section 1-75 of the Illinois Power
12 Agency Act.

13 (3) The Freedom of Information Act.

14 (4) The State Property Control Act.

15 (5) (Blank). ~~The Personnel Code.~~

16 (6) The State Officials and Employees Ethics Act.

17 (Source: P.A. 95-481, eff. 8-28-07.)

18 (20 ILCS 3855/1-70)

19 Sec. 1-70. Agency officials.

20 (a) The Agency shall have a Director who meets the
21 qualifications specified in Section 5-222 of the Civil
22 Administrative Code of Illinois (20 ILCS 5/5-222).

23 (b) Within the Illinois Power Agency, the Agency shall
24 establish a Planning and Procurement Bureau and a Resource

1 Development Bureau. Each Bureau shall report to the Director.

2 (c) The Chief of the Planning and Procurement Bureau shall
3 be appointed by the Director, at the Director's sole
4 discretion, and (i) shall have at least 5 ~~10~~ years of direct
5 experience in electricity supply planning and procurement and
6 (ii) shall also hold an advanced degree in risk management,
7 law, business, or a related field.

8 (d) The Chief of the Resource Development Bureau shall be
9 appointed by the Director and (i) shall have at least 5 ~~10~~
10 years of direct experience in electric generating project
11 development and (ii) shall also hold an advanced degree in
12 economics, engineering, law, business, or a related field.

13 (e) The Director shall receive an annual salary of \$100,000
14 or as set by the Compensation Review Board, whichever is
15 higher. The Bureau Chiefs shall each receive an annual salary
16 of \$85,000 or as set by the Compensation Review Board,
17 whichever is higher.

18 (f) The Director and Bureau Chiefs shall not, for 2 years
19 prior to appointment or for 2 years after he or she leaves his
20 or her position, be employed by an electric utility,
21 independent power producer, power marketer, or alternative
22 retail electric supplier regulated by the Commission or the
23 Federal Energy Regulatory Commission.

24 (g) The Director and Bureau Chiefs are prohibited from: (i)
25 owning, directly or indirectly, 5% or more of the voting
26 capital stock of an electric utility, independent power

1 producer, power marketer, or alternative retail electric
2 supplier; (ii) being in any chain of successive ownership of 5%
3 or more of the voting capital stock of any electric utility,
4 independent power producer, power marketer, or alternative
5 retail electric supplier; (iii) receiving any form of
6 compensation, fee, payment, or other consideration from an
7 electric utility, independent power producer, power marketer,
8 or alternative retail electric supplier, including legal fees,
9 consulting fees, bonuses, or other sums. These limitations do
10 not apply to any compensation received pursuant to a defined
11 benefit plan or other form of deferred compensation, provided
12 that the individual has otherwise severed all ties to the
13 utility, power producer, power marketer, or alternative retail
14 electric supplier.

15 (Source: P.A. 95-481, eff. 8-28-07.)

16 (20 ILCS 3855/1-75)

17 Sec. 1-75. Planning and Procurement Bureau. The Planning
18 and Procurement Bureau has the following duties and
19 responsibilities:

20 (a) The Planning and Procurement Bureau shall each year,
21 beginning in 2008, develop procurement plans and conduct
22 competitive procurement processes in accordance with the
23 requirements of Section 16-111.5 of the Public Utilities Act
24 for the eligible retail customers of electric utilities that on
25 December 31, 2005 provided electric service to at least 100,000

1 customers in Illinois. For the purposes of this Section, the
2 term "eligible retail customers" has the same definition as
3 found in Section 16-111.5(a) of the Public Utilities Act.

4 (1) The Agency shall each year, beginning in 2008, as
5 needed, issue a request for qualifications for experts or
6 expert consulting firms to develop the procurement plans in
7 accordance with Section 16-111.5 of the Public Utilities
8 Act. In order to qualify an expert or expert consulting
9 firm must have:

10 (A) direct previous experience assembling
11 large-scale power supply plans or portfolios for
12 end-use customers;

13 (B) an advanced degree in economics, mathematics,
14 engineering, risk management, or a related area of
15 study;

16 (C) 10 years of experience in the electricity
17 sector, including managing supply risk;

18 (D) expertise in wholesale electricity market
19 rules, including those established by the Federal
20 Energy Regulatory Commission and regional transmission
21 organizations;

22 (E) expertise in credit protocols and familiarity
23 with contract protocols;

24 (F) adequate resources to perform and fulfill the
25 required functions and responsibilities; and

26 (G) the absence of a conflict of interest and

1 inappropriate bias for or against potential bidders or
2 the affected electric utilities.

3 (2) The Agency shall each year, as needed, issue a
4 request for qualifications for a procurement administrator
5 to conduct the competitive procurement processes in
6 accordance with Section 16-111.5 of the Public Utilities
7 Act. In order to qualify an expert or expert consulting
8 firm must have:

9 (A) direct previous experience administering a
10 large-scale competitive procurement process;

11 (B) an advanced degree in economics, mathematics,
12 engineering, or a related area of study;

13 (C) 10 years of experience in the electricity
14 sector, including risk management experience;

15 (D) expertise in wholesale electricity market
16 rules, including those established by the Federal
17 Energy Regulatory Commission and regional transmission
18 organizations;

19 (E) expertise in credit and contract protocols;

20 (F) adequate resources to perform and fulfill the
21 required functions and responsibilities; and

22 (G) the absence of a conflict of interest and
23 inappropriate bias for or against potential bidders or
24 the affected electric utilities.

25 (3) The Agency shall provide affected utilities and
26 other interested parties with the lists of qualified

1 experts or expert consulting firms identified through the
2 request for qualifications processes that are under
3 consideration to develop the procurement plans and to serve
4 as the procurement administrator. The Agency shall also
5 provide each qualified expert's or expert consulting
6 firm's response to the request for qualifications. All
7 information provided under this subparagraph shall also be
8 provided to the Commission. The Agency may provide by rule
9 for fees associated with supplying the information to
10 utilities and other interested parties. These parties
11 shall, within 5 business days, notify the Agency in writing
12 if they object to any experts or expert consulting firms on
13 the lists. Objections shall be based on:

14 (A) failure to satisfy qualification criteria;

15 (B) identification of a conflict of interest; or

16 (C) evidence of inappropriate bias for or against
17 potential bidders or the affected utilities.

18 The Agency shall remove experts or expert consulting
19 firms from the lists within 10 days if there is a
20 reasonable basis for an objection and provide the updated
21 lists to the affected utilities and other interested
22 parties. If the Agency fails to remove an expert or expert
23 consulting firm from a list, an objecting party may seek
24 review by the Commission within 5 days thereafter by filing
25 a petition, and the Commission shall render a ruling on the
26 petition within 10 days. There is no right of appeal of the

1 Commission's ruling.

2 (4) The Agency shall issue requests for proposals to
3 the qualified experts or expert consulting firms to develop
4 a procurement plan for the affected utilities and to serve
5 as procurement administrator.

6 (5) The Agency shall select an expert or expert
7 consulting firm to develop procurement plans based on the
8 proposals submitted and shall award ~~one year~~ contracts of
9 up to 5 years to those selected ~~with an option for the~~
10 ~~Agency for a one year renewal.~~

11 (6) The Agency shall select an expert or expert
12 consulting firm, with approval of the Commission, to serve
13 as procurement administrator based on the proposals
14 submitted. If the Commission rejects, within 5 days, the
15 Agency's selection, the Agency shall submit another
16 recommendation within 3 days based on the proposals
17 submitted. The Agency shall award a 5-year ~~one year~~
18 contract to the expert or expert consulting firm so
19 selected with Commission approval ~~with an option for the~~
20 ~~Agency for a one year renewal.~~

21 (b) The experts or expert consulting firms retained by the
22 Agency shall, as appropriate, prepare procurement plans, and
23 conduct a competitive procurement process as prescribed in
24 Section 16-111.5 of the Public Utilities Act, to ensure
25 adequate, reliable, affordable, efficient, and environmentally
26 sustainable electric service at the lowest total cost over

1 time, taking into account any benefits of price stability, for
2 eligible retail customers of electric utilities that on
3 December 31, 2005 provided electric service to at least 100,000
4 customers in the State of Illinois.

5 (c) Renewable portfolio standard.

6 (1) The procurement plans shall include cost-effective
7 renewable energy resources. A minimum percentage of each
8 utility's total supply to serve the load of eligible retail
9 customers, as defined in Section 16-111.5(a) of the Public
10 Utilities Act, procured for each of the following years
11 shall be generated from cost-effective renewable energy
12 resources: at least 2% by June 1, 2008; at least 4% by June
13 1, 2009; at least 5% by June 1, 2010; at least 6% by June 1,
14 2011; at least 7% by June 1, 2012; at least 8% by June 1,
15 2013; at least 9% by June 1, 2014; at least 10% by June 1,
16 2015; and increasing by at least 1.5% each year thereafter
17 to at least 25% by June 1, 2025. To the extent that it is
18 available, at least 75% of the renewable energy resources
19 used to meet these standards shall come from wind
20 generation and, beginning on June 1, 2011, at least the
21 following percentages of the renewable energy resources
22 used to meet these standards shall come from photovoltaics
23 on the following schedule: 0.5% by June 1, 2012, 1.5% by
24 June 1, 2013; 3% by June 1, 2014; and 6% by June 1, 2015 and
25 thereafter.

26 For purposes of this subsection (c), "cost-effective"

1 means that the costs of procuring renewable energy
2 resources do not cause the limit stated in paragraph (2) of
3 this subsection (c) to be exceeded and do not exceed
4 benchmarks based on market prices for renewable energy
5 resources in the region, which shall be developed by the
6 procurement administrator, in consultation with the
7 Commission staff, Agency staff, and the procurement
8 monitor and shall be subject to Commission review and
9 approval.

10 (2) For purposes of this subsection (c), the required
11 procurement of cost-effective renewable energy resources
12 for a particular year shall be measured as a percentage of
13 the actual amount of electricity (megawatt-hours) supplied
14 by the electric utility to eligible retail customers in the
15 planning year ending immediately prior to the procurement.
16 For purposes of this subsection (c), the amount paid per
17 kilowatthour means the total amount paid for electric
18 service expressed on a per kilowatthour basis. For purposes
19 of this subsection (c), the total amount paid for electric
20 service includes without limitation amounts paid for
21 supply, transmission, distribution, surcharges, and add-on
22 taxes.

23 Notwithstanding the requirements of this subsection
24 (c), the total of renewable energy resources procured
25 pursuant to the procurement plan for any single year shall
26 be reduced by an amount necessary to limit the annual

1 estimated average net increase due to the costs of these
2 resources included in the amounts paid by eligible retail
3 customers in connection with electric service to:

4 (A) in 2008, no more than 0.5% of the amount paid
5 per kilowatthour by those customers during the year
6 ending May 31, 2007;

7 (B) in 2009, the greater of an additional 0.5% of
8 the amount paid per kilowatthour by those customers
9 during the year ending May 31, 2008 or 1% of the amount
10 paid per kilowatthour by those customers during the
11 year ending May 31, 2007;

12 (C) in 2010, the greater of an additional 0.5% of
13 the amount paid per kilowatthour by those customers
14 during the year ending May 31, 2009 or 1.5% of the
15 amount paid per kilowatthour by those customers during
16 the year ending May 31, 2007;

17 (D) in 2011, the greater of an additional 0.5% of
18 the amount paid per kilowatthour by those customers
19 during the year ending May 31, 2010 or 2% of the amount
20 paid per kilowatthour by those customers during the
21 year ending May 31, 2007; and

22 (E) thereafter, the amount of renewable energy
23 resources procured pursuant to the procurement plan
24 for any single year shall be reduced by an amount
25 necessary to limit the estimated average net increase
26 due to the cost of these resources included in the

1 amounts paid by eligible retail customers in
2 connection with electric service to no more than the
3 greater of 2.015% of the amount paid per kilowatthour
4 by those customers during the year ending May 31, 2007
5 or the incremental amount per kilowatthour paid for
6 these resources in 2011.

7 No later than June 30, 2011, the Commission shall
8 review the limitation on the amount of renewable energy
9 resources procured pursuant to this subsection (c) and
10 report to the General Assembly its findings as to
11 whether that limitation unduly constrains the
12 procurement of cost-effective renewable energy
13 resources.

14 (3) Through June 1, 2011, renewable energy resources
15 shall be counted for the purpose of meeting the renewable
16 energy standards set forth in paragraph (1) of this
17 subsection (c) only if they are generated from facilities
18 located in the State, provided that cost-effective
19 renewable energy resources are available from those
20 facilities. If those cost-effective resources are not
21 available in Illinois, they shall be procured in states
22 that adjoin Illinois and may be counted towards compliance.
23 If those cost-effective resources are not available in
24 Illinois or in states that adjoin Illinois, they shall be
25 purchased elsewhere and shall be counted towards
26 compliance. After June 1, 2011, cost-effective renewable

1 energy resources located in Illinois and in states that
2 adjoin Illinois may be counted towards compliance with the
3 standards set forth in paragraph (1) of this subsection
4 (c). If those cost-effective resources are not available in
5 Illinois or in states that adjoin Illinois, they shall be
6 purchased elsewhere and shall be counted towards
7 compliance.

8 (4) The electric utility shall retire all renewable
9 energy credits used to comply with the standard.

10 (5) Beginning with the year commencing June 1, 2010, an
11 electric utility subject to this subsection (c) shall apply
12 the lesser of the maximum alternative compliance payment
13 rate or the most recent estimated alternative compliance
14 payment rate for its service territory for the
15 corresponding compliance period, established pursuant to
16 subsection (d) of Section 16-115D of the Public Utilities
17 Act to its retail customers that take service pursuant to
18 the electric utility's hourly pricing tariff or tariffs.
19 The electric utility shall retain all amounts collected as
20 a result of the application of the alternative compliance
21 payment rate or rates to such customers, and, beginning in
22 2011, the utility shall include in the information provided
23 under item (1) of subsection (d) of Section 16-111.5 of the
24 Public Utilities Act the amounts collected under the
25 alternative compliance payment rate or rates for the prior
26 year ending May 31. Notwithstanding any limitation on the

1 procurement of renewable energy resources imposed by item
2 (2) of this subsection (c), the Agency shall increase its
3 spending on the purchase of renewable energy resources to
4 be procured by the electric utility for the next plan year
5 by an amount equal to the amounts collected by the utility
6 under the alternative compliance payment rate or rates in
7 the prior year ending May 31.

8 (d) Clean coal portfolio standard.

9 (1) The procurement plans shall include electricity
10 generated using clean coal. Each utility shall enter into
11 one or more sourcing agreements with the initial clean coal
12 facility, as provided in paragraph (3) of this subsection
13 (d), covering electricity generated by the initial clean
14 coal facility representing at least 5% of each utility's
15 total supply to serve the load of eligible retail customers
16 in 2015 and each year thereafter, as described in paragraph
17 (3) of this subsection (d), subject to the limits specified
18 in paragraph (2) of this subsection (d). It is the goal of
19 the State that by January 1, 2025, 25% of the electricity
20 used in the State shall be generated by cost-effective
21 clean coal facilities. For purposes of this subsection (d),
22 "cost-effective" means that the expenditures pursuant to
23 such sourcing agreements do not cause the limit stated in
24 paragraph (2) of this subsection (d) to be exceeded and do
25 not exceed cost-based benchmarks, which shall be developed
26 to assess all expenditures pursuant to such sourcing

1 agreements covering electricity generated by clean coal
2 facilities, other than the initial clean coal facility, by
3 the procurement administrator, in consultation with the
4 Commission staff, Agency staff, and the procurement
5 monitor and shall be subject to Commission review and
6 approval.

7 ~~(A)~~ A utility party to a sourcing agreement shall
8 immediately retire any emission credits that it receives in
9 connection with the electricity covered by such agreement.

10 ~~(B)~~ Utilities shall maintain adequate records
11 documenting the purchases under the sourcing agreement to
12 comply with this subsection (d) and shall file an
13 accounting with the load forecast that must be filed with
14 the Agency by July 15 of each year, in accordance with
15 subsection (d) of Section 16-111.5 of the Public Utilities
16 Act.

17 ~~(C)~~ A utility shall be deemed to have complied with the
18 clean coal portfolio standard specified in this subsection
19 (d) if the utility enters into a sourcing agreement as
20 required by this subsection (d).

21 (2) For purposes of this subsection (d), the required
22 execution of sourcing agreements with the initial clean
23 coal facility for a particular year shall be measured as a
24 percentage of the actual amount of electricity
25 (megawatt-hours) supplied by the electric utility to
26 eligible retail customers in the planning year ending

1 immediately prior to the agreement's execution. For
2 purposes of this subsection (d), the amount paid per
3 kilowatthour means the total amount paid for electric
4 service expressed on a per kilowatthour basis. For purposes
5 of this subsection (d), the total amount paid for electric
6 service includes without limitation amounts paid for
7 supply, transmission, distribution, surcharges and add-on
8 taxes.

9 Notwithstanding the requirements of this subsection
10 (d), the total amount paid under sourcing agreements with
11 clean coal facilities pursuant to the procurement plan for
12 any given year shall be reduced by an amount necessary to
13 limit the annual estimated average net increase due to the
14 costs of these resources included in the amounts paid by
15 eligible retail customers in connection with electric
16 service to:

17 (A) in 2010, no more than 0.5% of the amount paid
18 per kilowatthour by those customers during the year
19 ending May 31, 2009;

20 (B) in 2011, the greater of an additional 0.5% of
21 the amount paid per kilowatthour by those customers
22 during the year ending May 31, 2010 or 1% of the amount
23 paid per kilowatthour by those customers during the
24 year ending May 31, 2009;

25 (C) in 2012, the greater of an additional 0.5% of
26 the amount paid per kilowatthour by those customers

1 during the year ending May 31, 2011 or 1.5% of the
2 amount paid per kilowatthour by those customers during
3 the year ending May 31, 2009;

4 (D) in 2013, the greater of an additional 0.5% of
5 the amount paid per kilowatthour by those customers
6 during the year ending May 31, 2012 or 2% of the amount
7 paid per kilowatthour by those customers during the
8 year ending May 31, 2009; and

9 (E) thereafter, the total amount paid under
10 sourcing agreements with clean coal facilities
11 pursuant to the procurement plan for any single year
12 shall be reduced by an amount necessary to limit the
13 estimated average net increase due to the cost of these
14 resources included in the amounts paid by eligible
15 retail customers in connection with electric service
16 to no more than the greater of (i) 2.015% of the amount
17 paid per kilowatthour by those customers during the
18 year ending May 31, 2009 or (ii) the incremental amount
19 per kilowatthour paid for these resources in 2013.
20 These requirements may be altered only as provided by
21 statute.

22 No later than June 30, 2015, the Commission shall
23 review the limitation on the total amount paid under
24 sourcing agreements, if any, with clean coal facilities
25 pursuant to this subsection (d) and report to the General
26 Assembly its findings as to whether that limitation unduly

1 constrains the amount of electricity generated by
2 cost-effective clean coal facilities that is covered by
3 sourcing agreements.

4 (3) Initial clean coal facility. In order to promote
5 development of clean coal facilities in Illinois, each
6 electric utility subject to this Section shall execute a
7 sourcing agreement to source electricity from a proposed
8 clean coal facility in Illinois (the "initial clean coal
9 facility") that will have a nameplate capacity of at least
10 500 MW when commercial operation commences, that has a
11 final Clean Air Act permit on the effective date of this
12 amendatory Act of the 95th General Assembly, and that will
13 meet the definition of clean coal facility in Section 1-10
14 of this Act when commercial operation commences. The
15 sourcing agreements with this initial clean coal facility
16 shall be subject to both approval of the initial clean coal
17 facility by the General Assembly and satisfaction of the
18 requirements of paragraph (4) of this subsection (d) and
19 shall be executed within 90 days after any such approval by
20 the General Assembly. The Agency and the Commission shall
21 have authority to inspect all books and records associated
22 with the initial clean coal facility during the term of
23 such a sourcing agreement. A utility's sourcing agreement
24 for electricity produced by the initial clean coal facility
25 shall include:

26 (A) a formula contractual price (the "contract

1 price") approved pursuant to paragraph (4) of this
2 subsection (d), which shall:

3 (i) be determined using a cost of service
4 methodology employing either a level or deferred
5 capital recovery component, based on a capital
6 structure consisting of 45% equity and 55% debt,
7 and a return on equity as may be approved by the
8 Federal Energy Regulatory Commission, which in any
9 case may not exceed the lower of 11.5% or the rate
10 of return approved by the General Assembly
11 pursuant to paragraph (4) of this subsection (d);
12 and

13 (ii) provide that all miscellaneous net
14 revenue, including but not limited to net revenue
15 from the sale of emission allowances, if any,
16 substitute natural gas, if any, grants or other
17 support provided by the State of Illinois or the
18 United States Government, firm transmission
19 rights, if any, by-products produced by the
20 facility, energy or capacity derived from the
21 facility and not covered by a sourcing agreement
22 pursuant to paragraph (3) of this subsection (d) or
23 item (5) of subsection (d) of Section 16-115 of the
24 Public Utilities Act, whether generated from the
25 synthesis gas derived from coal, from SNG, or from
26 natural gas, shall be credited against the revenue

1 requirement for this initial clean coal facility;

2 (B) power purchase provisions, which shall:

3 (i) provide that the utility party to such
4 sourcing agreement shall pay the contract price
5 for electricity delivered under such sourcing
6 agreement;

7 (ii) require delivery of electricity to the
8 regional transmission organization market of the
9 utility that is party to such sourcing agreement;

10 (iii) require the utility party to such
11 sourcing agreement to buy from the initial clean
12 coal facility in each hour an amount of energy
13 equal to all clean coal energy made available from
14 the initial clean coal facility during such hour
15 times a fraction, the numerator of which is such
16 utility's retail market sales of electricity
17 (expressed in kilowatthours sold) in the State
18 during the prior calendar month and the
19 denominator of which is the total retail market
20 sales of electricity (expressed in kilowatthours
21 sold) in the State by utilities during such prior
22 month and the sales of electricity (expressed in
23 kilowatthours sold) in the State by alternative
24 retail electric suppliers during such prior month
25 that are subject to the requirements of this
26 subsection (d) and paragraph (5) of subsection (d)

1 of Section 16-115 of the Public Utilities Act,
2 provided that the amount purchased by the utility
3 in any year will be limited by paragraph (2) of
4 this subsection (d); and

5 (iv) be considered pre-existing contracts in
6 such utility's procurement plans for eligible
7 retail customers;

8 (C) contract for differences provisions, which
9 shall:

10 (i) require the utility party to such sourcing
11 agreement to contract with the initial clean coal
12 facility in each hour with respect to an amount of
13 energy equal to all clean coal energy made
14 available from the initial clean coal facility
15 during such hour times a fraction, the numerator of
16 which is such utility's retail market sales of
17 electricity (expressed in kilowatthours sold) in
18 the utility's service territory in the State
19 during the prior calendar month and the
20 denominator of which is the total retail market
21 sales of electricity (expressed in kilowatthours
22 sold) in the State by utilities during such prior
23 month and the sales of electricity (expressed in
24 kilowatthours sold) in the State by alternative
25 retail electric suppliers during such prior month
26 that are subject to the requirements of this

1 subsection (d) and paragraph (5) of subsection (d)
2 of Section 16-115 of the Public Utilities Act,
3 provided that the amount paid by the utility in any
4 year will be limited by paragraph (2) of this
5 subsection (d);

6 (ii) provide that the utility's payment
7 obligation in respect of the quantity of
8 electricity determined pursuant to the preceding
9 clause (i) shall be limited to an amount equal to
10 (1) the difference between the contract price
11 determined pursuant to subparagraph (A) of
12 paragraph (3) of this subsection (d) and the
13 day-ahead price for electricity delivered to the
14 regional transmission organization market of the
15 utility that is party to such sourcing agreement
16 (or any successor delivery point at which such
17 utility's supply obligations are financially
18 settled on an hourly basis) (the "reference
19 price") on the day preceding the day on which the
20 electricity is delivered to the initial clean coal
21 facility busbar, multiplied by (2) the quantity of
22 electricity determined pursuant to the preceding
23 clause (i); and

24 (iii) not require the utility to take physical
25 delivery of the electricity produced by the
26 facility;

1 (D) general provisions, which shall:

2 (i) specify a term of no more than 30 years,
3 commencing on the commercial operation date of the
4 facility;

5 (ii) provide that utilities shall maintain
6 adequate records documenting purchases under the
7 sourcing agreements entered into to comply with
8 this subsection (d) and shall file an accounting
9 with the load forecast that must be filed with the
10 Agency by July 15 of each year, in accordance with
11 subsection (d) of Section 16-111.5 of the Public
12 Utilities Act.

13 (iii) provide that all costs associated with
14 the initial clean coal facility will be
15 periodically reported to the Federal Energy
16 Regulatory Commission and to purchasers in
17 accordance with applicable laws governing
18 cost-based wholesale power contracts;

19 (iv) permit the Illinois Power Agency to
20 assume ownership of the initial clean coal
21 facility, without monetary consideration and
22 otherwise on reasonable terms acceptable to the
23 Agency, if the Agency so requests no less than 3
24 years prior to the end of the stated contract term;

25 (v) require the owner of the initial clean coal
26 facility to provide documentation to the

1 Commission each year, starting in the facility's
2 first year of commercial operation, accurately
3 reporting the quantity of carbon emissions from
4 the facility that have been captured and
5 sequestered and report any quantities of carbon
6 released from the site or sites at which carbon
7 emissions were sequestered in prior years, based
8 on continuous monitoring of such sites. If, in any
9 year after the first year of commercial operation,
10 the owner of the facility fails to demonstrate that
11 the initial clean coal facility captured and
12 sequestered at least 50% of the total carbon
13 emissions that the facility would otherwise emit
14 or that sequestration of emissions from prior
15 years has failed, resulting in the release of
16 carbon dioxide into the atmosphere, the owner of
17 the facility must offset excess emissions. Any
18 such carbon offsets must be permanent, additional,
19 verifiable, real, located within the State of
20 Illinois, and legally and practicably enforceable.
21 The cost of such offsets for the facility that are
22 not recoverable shall not exceed \$15 million in any
23 given year. No costs of any such purchases of
24 carbon offsets may be recovered from a utility or
25 its customers. All carbon offsets purchased for
26 this purpose and any carbon emission credits

1 associated with sequestration of carbon from the
2 facility must be permanently retired. The initial
3 clean coal facility shall not forfeit its
4 designation as a clean coal facility if the
5 facility fails to fully comply with the applicable
6 carbon sequestration requirements in any given
7 year, provided the requisite offsets are
8 purchased. However, the Attorney General, on
9 behalf of the People of the State of Illinois, may
10 specifically enforce the facility's sequestration
11 requirement and the other terms of this contract
12 provision. Compliance with the sequestration
13 requirements and offset purchase requirements
14 specified in paragraph (3) of this subsection (d)
15 shall be reviewed annually by an independent
16 expert retained by the owner of the initial clean
17 coal facility, with the advance written approval
18 of the Attorney General. The Commission may, in the
19 course of the review specified in item (vii),
20 reduce the allowable return on equity for the
21 facility if the facility wilfully fails to comply
22 with the carbon capture and sequestration
23 requirements set forth in this item (v);

24 (vi) include limits on, and accordingly
25 provide for modification of, the amount the
26 utility is required to source under the sourcing

1 agreement consistent with paragraph (2) of this
2 subsection (d);

3 (vii) require Commission review: (1) to
4 determine the justness, reasonableness, and
5 prudence of the inputs to the formula referenced in
6 subparagraphs (A)(i) through (A)(iii) of paragraph
7 (3) of this subsection (d), prior to an adjustment
8 in those inputs including, without limitation, the
9 capital structure and return on equity, fuel
10 costs, and other operations and maintenance costs
11 and (2) to approve the costs to be passed through
12 to customers under the sourcing agreement by which
13 the utility satisfies its statutory obligations.
14 Commission review shall occur no less than every 3
15 years, regardless of whether any adjustments have
16 been proposed, and shall be completed within 9
17 months;

18 (viii) limit the utility's obligation to such
19 amount as the utility is allowed to recover through
20 tariffs filed with the Commission, provided that
21 neither the clean coal facility nor the utility
22 waives any right to assert federal pre-emption or
23 any other argument in response to a purported
24 disallowance of recovery costs;

25 (ix) limit the utility's or alternative retail
26 electric supplier's obligation to incur any

1 liability until such time as the facility is in
2 commercial operation and generating power and
3 energy and such power and energy is being delivered
4 to the facility busbar;

5 (x) provide that the owner or owners of the
6 initial clean coal facility, which is the
7 counterparty to such sourcing agreement, shall
8 have the right from time to time to elect whether
9 the obligations of the utility party thereto shall
10 be governed by the power purchase provisions or the
11 contract for differences provisions;

12 (xi) append documentation showing that the
13 formula rate and contract, insofar as they relate
14 to the power purchase provisions, have been
15 approved by the Federal Energy Regulatory
16 Commission pursuant to Section 205 of the Federal
17 Power Act;

18 (xii) provide that any changes to the terms of
19 the contract, insofar as such changes relate to the
20 power purchase provisions, are subject to review
21 under the public interest standard applied by the
22 Federal Energy Regulatory Commission pursuant to
23 Sections 205 and 206 of the Federal Power Act; and

24 (xiii) conform with customary lender
25 requirements in power purchase agreements used as
26 the basis for financing non-utility generators.

1 (4) Effective date of sourcing agreements with the
2 initial clean coal facility.

3 Any proposed sourcing agreement with the initial clean
4 coal facility shall not become effective unless the
5 following reports are prepared and submitted and
6 authorizations and approvals obtained:

7 (i) Facility cost report. The owner of the initial
8 clean coal facility shall submit to the Commission, the
9 Agency, and the General Assembly a front-end
10 engineering and design study, a facility cost report,
11 method of financing (including but not limited to
12 structure and associated costs), and an operating and
13 maintenance cost quote for the facility (collectively
14 "facility cost report"), which shall be prepared in
15 accordance with the requirements of this paragraph (4)
16 of subsection (d) of this Section, and shall provide
17 the Commission and the Agency access to the work
18 papers, relied upon documents, and any other backup
19 documentation related to the facility cost report.

20 (ii) Commission report. Within 6 months following
21 receipt of the facility cost report, the Commission, in
22 consultation with the Agency, shall submit a report to
23 the General Assembly setting forth its analysis of the
24 facility cost report. Such report shall include, but
25 not be limited to, a comparison of the costs associated
26 with electricity generated by the initial clean coal

1 facility to the costs associated with electricity
2 generated by other types of generation facilities, an
3 analysis of the rate impacts on residential and small
4 business customers over the life of the sourcing
5 agreements, and an analysis of the likelihood that the
6 initial clean coal facility will commence commercial
7 operation by and be delivering power to the facility's
8 busbar by 2016. To assist in the preparation of its
9 report, the Commission, in consultation with the
10 Agency, may hire one or more experts or consultants,
11 the costs of which shall be paid for by the owner of
12 the initial clean coal facility. The Commission and
13 Agency may begin the process of selecting such experts
14 or consultants prior to receipt of the facility cost
15 report.

16 (iii) General Assembly approval. The proposed
17 sourcing agreements shall not take effect unless,
18 based on the facility cost report and the Commission's
19 report, the General Assembly enacts authorizing
20 legislation approving (A) the projected price, stated
21 in cents per kilowatthour, to be charged for
22 electricity generated by the initial clean coal
23 facility, (B) the projected impact on residential and
24 small business customers' bills over the life of the
25 sourcing agreements, and (C) the maximum allowable
26 return on equity for the project; and

1 (iv) Commission review. If the General Assembly
2 enacts authorizing legislation pursuant to
3 subparagraph (iii) approving a sourcing agreement, the
4 Commission shall, within 90 days of such enactment,
5 complete a review of such sourcing agreement. During
6 such time period, the Commission shall implement any
7 directive of the General Assembly, resolve any
8 disputes between the parties to the sourcing agreement
9 concerning the terms of such agreement, approve the
10 form of such agreement, and issue an order finding that
11 the sourcing agreement is prudent and reasonable.

12 The facility cost report shall be prepared as follows:

13 (A) The facility cost report shall be prepared by
14 duly licensed engineering and construction firms
15 detailing the estimated capital costs payable to one or
16 more contractors or suppliers for the engineering,
17 procurement and construction of the components
18 comprising the initial clean coal facility and the
19 estimated costs of operation and maintenance of the
20 facility. The facility cost report shall include:

21 (i) an estimate of the capital cost of the core
22 plant based on one or more front end engineering
23 and design studies for the gasification island and
24 related facilities. The core plant shall include
25 all civil, structural, mechanical, electrical,
26 control, and safety systems.

1 (ii) an estimate of the capital cost of the
2 balance of the plant, including any capital costs
3 associated with sequestration of carbon dioxide
4 emissions and all interconnects and interfaces
5 required to operate the facility, such as
6 transmission of electricity, construction or
7 backfeed power supply, pipelines to transport
8 substitute natural gas or carbon dioxide, potable
9 water supply, natural gas supply, water supply,
10 water discharge, landfill, access roads, and coal
11 delivery.

12 The quoted construction costs shall be expressed
13 in nominal dollars as of the date that the quote is
14 prepared and shall include ~~(1)~~ capitalized financing
15 costs during construction, ~~(2)~~ taxes, insurance, and
16 other owner's costs, and ~~(3)~~ an assumed escalation in
17 materials and labor beyond the date as of which the
18 construction cost quote is expressed.

19 (B) The front end engineering and design study for
20 the gasification island and the cost study for the
21 balance of plant shall include sufficient design work
22 to permit quantification of major categories of
23 materials, commodities and labor hours, and receipt of
24 quotes from vendors of major equipment required to
25 construct and operate the clean coal facility.

26 (C) The facility cost report shall also include an

1 operating and maintenance cost quote that will provide
2 the estimated cost of delivered fuel, personnel,
3 maintenance contracts, chemicals, catalysts,
4 consumables, spares, and other fixed and variable
5 operations and maintenance costs. ~~(a)~~ The delivered
6 fuel cost estimate will be provided by a recognized
7 third party expert or experts in the fuel and
8 transportation industries. ~~(b)~~ The balance of the
9 operating and maintenance cost quote, excluding
10 delivered fuel costs, will be developed based on the
11 inputs provided by duly licensed engineering and
12 construction firms performing the construction cost
13 quote, potential vendors under long-term service
14 agreements and plant operating agreements, or
15 recognized third party plant operator or operators.

16 The operating and maintenance cost quote
17 (including the cost of the front end engineering and
18 design study) shall be expressed in nominal dollars as
19 of the date that the quote is prepared and shall
20 include ~~(1)~~ taxes, insurance, and other owner's costs,
21 and ~~(2)~~ an assumed escalation in materials and labor
22 beyond the date as of which the operating and
23 maintenance cost quote is expressed.

24 (D) The facility cost report shall also include ~~(i)~~
25 an analysis of the initial clean coal facility's
26 ability to deliver power and energy into the applicable

1 regional transmission organization markets and ~~(ii)~~ an
2 analysis of the expected capacity factor for the
3 initial clean coal facility.

4 (E) Amounts paid to third parties unrelated to the
5 owner or owners of the initial clean coal facility to
6 prepare the core plant construction cost quote,
7 including the front end engineering and design study,
8 and the operating and maintenance cost quote will be
9 reimbursed through Coal Development Bonds.

10 (5) Re-powering and retrofitting coal-fired power
11 plants previously owned by Illinois utilities to qualify as
12 clean coal facilities. During the 2009 procurement
13 planning process and thereafter, the Agency and the
14 Commission shall consider sourcing agreements covering
15 electricity generated by power plants that were previously
16 owned by Illinois utilities and that have been or will be
17 converted into clean coal facilities, as defined by Section
18 1-10 of this Act. Pursuant to such procurement planning
19 process, the owners of such facilities may propose to the
20 Agency sourcing agreements with utilities and alternative
21 retail electric suppliers required to comply with
22 subsection (d) of this Section and item (5) of subsection
23 (d) of Section 16-115 of the Public Utilities Act, covering
24 electricity generated by such facilities. In the case of
25 sourcing agreements that are power purchase agreements,
26 the contract price for electricity sales shall be

1 established on a cost of service basis. In the case of
2 sourcing agreements that are contracts for differences,
3 the contract price from which the reference price is
4 subtracted shall be established on a cost of service basis.
5 The Agency and the Commission may approve any such utility
6 sourcing agreements that do not exceed cost-based
7 benchmarks developed by the procurement administrator, in
8 consultation with the Commission staff, Agency staff and
9 the procurement monitor, subject to Commission review and
10 approval. The Commission shall have authority to inspect
11 all books and records associated with these clean coal
12 facilities during the term of any such contract.

13 (6) Costs incurred under this subsection (d) or
14 pursuant to a contract entered into under this subsection
15 (d) shall be deemed prudently incurred and reasonable in
16 amount and the electric utility shall be entitled to full
17 cost recovery pursuant to the tariffs filed with the
18 Commission.

19 (e) The draft procurement plans are subject to public
20 comment, as required by Section 16-111.5 of the Public
21 Utilities Act.

22 (f) The Agency shall submit the final procurement plan to
23 the Commission. The Agency shall revise a procurement plan if
24 the Commission determines that it does not meet the standards
25 set forth in Section 16-111.5 of the Public Utilities Act.

26 (g) The Agency shall assess fees to each affected utility

1 to recover the costs incurred in preparation of the annual
2 procurement plan for the utility.

3 (h) The Agency shall assess fees to each bidder to recover
4 the costs incurred in connection with a competitive procurement
5 process.

6 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09;
7 96-159, eff. 8-10-09; 96-1437, eff. 8-17-10.)

8 Section 880. The Illinois Procurement Code is amended by
9 changing Section 50-39 as follows:

10 (30 ILCS 500/50-39)

11 Sec. 50-39. Procurement communications reporting
12 requirement.

13 (a) Any written or oral communication received by a State
14 employee that imparts or requests material information or makes
15 a material argument regarding potential action concerning a
16 procurement matter, including, but not limited to, an
17 application, a contract, or a project, shall be reported to the
18 Procurement Policy Board, and, with respect to the Illinois
19 Power Agency, by the initiator of the communication, and may be
20 reported also by the recipient. Any person communicating
21 orally, in writing, electronically, or otherwise with the
22 Director or any person employed by, or associated with, the
23 Illinois Power Agency to impart, solicit, or transfer any
24 information related to the content of any power procurement

1 plan, the manner of conducting any power procurement process,
2 the procurement of any power supply, or the method or structure
3 of contracting with power suppliers must disclose to the
4 Procurement Policy Board the full nature, content, and extent
5 of any such communication in writing by submitting a report
6 with the following information:

7 (1) The names of any party to the communication.

8 (2) The date on which the communication occurred.

9 (3) The time at which the communication occurred.

10 (4) The duration of the communication.

11 (5) The method (written, oral, etc.) of the
12 communication.

13 (6) A summary of the substantive content of the
14 communication.

15 These communications do not include the following: (i)
16 statements by a person publicly made in a public forum; (ii)
17 statements regarding matters of procedure and practice, such as
18 format, the number of copies required, the manner of filing,
19 and the status of a matter; and (iii) statements made by a
20 State employee of the agency to the agency head or other
21 employees of that agency or to the employees of the Executive
22 Ethics Commission. The provisions of this Section shall not
23 apply to communications regarding the administration and
24 implementation of an existing contract, except communications
25 regarding change orders or the renewal or extension of a
26 contract.

1 (b) The report required by subsection (a) shall be
2 submitted monthly and include at least the following: (i) the
3 date and time of each communication; (ii) the identity of each
4 person from whom the written or oral communication was
5 received, the individual or entity represented by that person,
6 and any action the person requested or recommended; (iii) the
7 identity and job title of the person to whom each communication
8 was made; (iv) if a response is made, the identity and job
9 title of the person making each response; (v) a detailed
10 summary of the points made by each person involved in the
11 communication; (vi) the duration of the communication; (vii)
12 the location or locations of all persons involved in the
13 communication and, if the communication occurred by telephone,
14 the telephone numbers for the callers and recipients of the
15 communication; and (viii) any other pertinent information.

16 (c) Additionally, when an oral communication made by a
17 person required to register under the Lobbyist Registration Act
18 is received by a State employee that is covered under this
19 Section, all individuals who initiate or participate in the
20 oral communication shall submit a written report to that State
21 employee that memorializes the communication and includes, but
22 is not limited to, the items listed in subsection (b).

23 (d) The Procurement Policy Board shall make each report
24 submitted pursuant to this Section available on its website
25 within 7 days after its receipt of the report. The Procurement
26 Policy Board may promulgate rules to ensure compliance with

1 this Section.

2 (e) The reporting requirements shall also be conveyed
3 through ethics training under the State ~~Employees and Officials~~
4 and Employees Ethics Act. An employee who knowingly and
5 intentionally violates this Section shall be subject to
6 suspension or discharge. The Executive Ethics Commission shall
7 promulgate rules, including emergency rules, to implement this
8 Section.

9 (f) This Section becomes operative on January 1, 2011.

10 (Source: P.A. 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793
11 for the effective date of changes made by P.A. 96-795); 96-920,
12 eff. 7-1-10; revised 9-27-10.)

13 Section 900. The State Lawsuit Immunity Act is amended by
14 changing Section 1 as follows:

15 (745 ILCS 5/1) (from Ch. 127, par. 801)

16 Sec. 1. Except as provided in the Illinois Public Labor
17 Relations Act, the Court of Claims Act, the State Officials and
18 Employees Ethics Act, and Section 1.5 of this Act, ~~and, except~~
19 ~~as provided in and to the extent provided in the Clean Coal~~
20 ~~FutureGen for Illinois Act,~~ the State of Illinois shall not be
21 made a defendant or party in any court.

22 (Source: P.A. 95-18, eff. 7-30-07; 95-331, eff. 8-21-07;
23 95-876, eff. 8-21-08.)

1 (705 ILCS 505/8.5 rep.)

2 Section 910. The Court of Claims Act is amended by
3 repealing Section 8.5.

4 Section 995. No acceleration or delay. Where this Act makes
5 changes in a statute that is represented in this Act by text
6 that is not yet or no longer in effect (for example, a Section
7 represented by multiple versions), the use of that text does
8 not accelerate or delay the taking effect of (i) the changes
9 made by this Act or (ii) provisions derived from any other
10 Public Act.

11 Section 997. Severability. The provisions of this Act are
12 severable under Section 1.31 of the Statute on Statutes.

13 Section 999. Effective date. This Act takes effect upon
14 becoming law.